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7 Attorneys for Defendant  
8 MIDLAND FUNDING, LLC

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON AT SPOKANE

11 KELLI GRAY, and all others similarly  
12 situated,

13 Plaintiffs,

14 v.

15 SUTTELL AND ASSOCIATES;  
16 MIDLAND FUNDING, LLC; MARK T.  
17 CASE, and JANE DOE CASE, husband  
18 and wife, KAREN HAMMMER and  
19 JOHN DOE HAMMER,

20 Defendants.  
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**Case No. 2:09-cv-251-EFS**

**APPLICATION AND MOTION FOR  
EXPEDITED HEARING AND  
RULING REGARDING DISCOVERY  
ISSUES AND STAY OF DISCOVERY  
PENDING RULING ON MOTION TO  
CONSOLIDATE CASES (DOCKET  
NO. 143)**

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I.

**MOTION**

The defendant, Midland Funding, LLC, moves the Court in accordance with Local Rule 37.1(e) for an expedited hearing and ruling to assist the parties with resolution of discovery issues concerning the following 30(b)(6) dispositions and related production requests:

- December 7, 2010 at 9:00 a.m. – Deposition of Designated Representative of Midland Credit Management, Inc.
- December 8, 2010 at 9:00 a.m. – Deposition of Designated Representative of Encore Capital Group, Inc.
- December 9, 2010 at 9:00 a.m. – Deposition of Designated Representative of Defendant Midland Funding, LLC.

Only Midland Funding, LLC is a party to this proceeding. Midland Credit Management, Inc. and Encore Capitol Group, Inc. are not parties in this matter but were later identified as defendants in the recently filed Lauber class action identified below, after notice was given. As such, Midland Funding, LLC respectfully requests that the Court stay the foregoing 30(b)(6) depositions pending hearing and ruling of Plaintiff's pending Motion to Consolidate (Docket No. 143). This case captioned as *Lauber, et al. v Encore Capitol Group, Inc., et al.*, United States District Court, Eastern District of Washington, Case No. CV-05132-LRS ("Lauber").

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## II.

### FACTS/PROCEDURAL HISTORY

On August 13, 2009, Plaintiff filed this class action against Defendant Midland Funding (“Midland Funding”) and other parties alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”), the Washington State Consumer Protection Act (RCW 19.86 et seq.) (“WCPA”), and the State of Washington Collection Agency Act, RCW 19.16, (“WCAA”). (Doc. No. 1).

Recently, on November 10, 2010, the new class action, Lauber, was filed against Midland Funding and other parties, including Midland Credit Management, Inc. (“MCMI”) and Encore Capitol Group, Inc. (“Encore”) pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., (“FDCPA”), the State of Washington Collection Agency Act, RCW 19.16, (“WCAA”), and the Washington State Consumer Protection Act (RCW 19.86 et seq.) (“WCPA”). (Case No. CV-05132-LRS).

Prior to the filing of the Lauber case, the defendant Midland Funding, LLC agreed to designate a 30(b)(6) representative to testify to areas of inquiry presented in Notice of 30(b)(6) deposition attached hereto as Appendix ‘A’. However, one day prior to filing Lauber, plaintiffs issued new 30(b)(6) deposition notices on Midland, MCMI, and Encore to depose each company according to Federal Rule of Civil

1 Procedure 30(b)(6) and 45 on December 7, 8 and 9, 2010 (Appendix “B”). The next  
2 day, counsel for plaintiff in Gray moved to consolidate both class actions, alleging  
3 that the actions “involve common defendants, common questions of law and common  
4 questions of fact, each arising from the same systematic conduct of the same  
5 defendants.” (Doc. 146, p. 2). It is evident in the broad scope of the 30(b)(6) notices  
6 that the plaintiff is seeking to conduct discovery in the Gray case to establish factual  
7 predicates for their contentions in the Lauber case. A comparison in the initial  
8 30(b)(6) notices (Appendix “A”) with 30(b)(6) notices of November 9, 2010,  
9 (Appendix “B”) demonstrate categories of inquiry are clearly directed at advancing  
10 discovery in Lauber, not Gray. Gray is premised upon legal issues over collection  
11 agency licensing requirements and the statute of limitations applicable to credit card  
12 debt. In the interest of judicial economy, avoidance of undue burden on defendants  
13 named in both cases, and as required by Federal Rule of Civil Procedure 26(d) and (f),  
14 Midland Funding requests this Court to stay the aforesaid depositions pending the  
15 ruling on Plaintiff’s Motion to Consolidate.  
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### 21 III.

## 22 LEGAL AUTHORITY

### 23 A. Depositions of Midland Funding, LLC, Midland Credit Management, Inc., 24 and Encore Should be Stayed. 25 26

1 Federal courts have broad authority pursuant to Federal Rule of Civil Procedure  
2 26(c) to limit discovery as necessary to “protect a party or person from annoyance,  
3 embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). In  
4 recognition of this authority, the Supreme Court has directed that “judges should not  
5 hesitate to exercise appropriate control over the discovery process.” *Herbert v.*  
6 *Lando*, 441 U.S. 153, 177 (1979).  
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9 Several factors the court should consider in a motion to stay are “(1) potential  
10 prejudice to the non-moving party; (2) hardship and inequity to the moving party if  
11 the action is not stayed; and (3) the judicial resources that would be saved by avoiding  
12 duplicative litigation if the cases are in fact consolidated.” *Rivers v. Walt Disney Co.*,  
13 980 F. Supp. 1358, 1362 (C.D.Cal.,1997). A court has full discretion to grant a stay  
14 “and it is appropriate when it serves the interests of judicial economy and efficiency.”  
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16 *Id.*  
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18 Here, the reasons for staying discovery are straightforward, contemplate  
19 compliance with the discovery rules, and are in the interest of judicial economy.  
20 Plaintiff has moved to consolidate the complaint filed on November 10, 2010, (Case  
21 No. CV-05132-LRS, “*Lauber Action*”) with this action (Doc. No. 143). Plaintiff’s  
22 Memorandum in Support points out that the new action “has not yet been served [and]  
23  
24 no scheduling conference has been scheduled.” (Doc. No. 146).  
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1 First, if the 30(b)(6) depositions are permitted to continue as scheduled,  
2 Plaintiff would obtain discovery as to the *Lauber* action before an action even exists  
3 and prior to the mandatory discovery conference required under Federal Rule of Civil  
4 Procedure 26(d). Plaintiff “may not seek discovery from any source before the parties  
5 have conferred as required by Rule 26(f).” F.R.C.P. 26(d). Rule 26(f) sets forth that  
6 the parties must discuss and create a discovery plan before discovery of any kind is  
7 initiated. As pointed out by the court in *Mavrovich v. Vanderpool*,

10 plaintiff is not entitled to discovery at this early stage in the proceedings.  
11 Fed.R.Civ.P. 26(d) provides that “a party may not seek discovery from any  
12 source before the parties have conferred as required by Rule 26(f).” In this case,  
13 two dispositive motions are pending. The Court has not yet issued an Initial  
14 Order Regarding Planning and Scheduling. Such an order would require the  
15 parties to hold a Rule 26(f) meeting by a certain date. Because the parties have  
16 not held a Rule 26(f) meeting, plaintiff is not entitled to discovery at this time.  
17 427 F.Supp.2d 1084, 1087 (D. Kan., 2006). Thus, if Plaintiff obtains the depositions  
18 prior to this Court’s determination to consolidate, Plaintiff, and the plaintiffs in the  
19 *Lauber* action, would circumvent Rule 26’s requirements and therefore violate the  
20 Rules of Civil Procedure.

21 Second, Plaintiff would not suffer any prejudice or harm if the depositions were  
22 delayed pending this Court’s determination on the motion to consolidate. That motion  
23 is scheduled for December 20, 2010, without oral argument. (Doc. No. 144).  
24 Defendant Midland opposes consolidation as it believes that the two cases do not  
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1 share common issues of fact or law. Regardless, the depositions of all named  
2 defendants in the Lauber case have been scheduled under the Gray caption, and are  
3 currently scheduled for December 7, 8 and 9, 2010, in San Diego, California. While  
4 the delay – and therefore any harm to Plaintiff in Gray – would be slight. However,  
5 the burden to the Defendant to engage in duplicative depositions and duplicative  
6 document production is certain, regardless of whether or not the cases are  
7 consolidated. To request Defendant and third parties – who are also defendants in the  
8 *Lauber* action – to appear and then likely be required to appear again as to the *Lauber*  
9 action would be equally unduly burdensome, costly, and inequitable to all defendants  
10 involved.  
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13 Finally, the scope of the complaint and relevant discovery will be distinct if the  
14 actions are not consolidated. However, based upon the scope of the noticed 30(b)(6)  
15 depositions, it is clear the Plaintiff in Gray is seeking discovery for Lauber. Although  
16 plaintiff alleges the two cases overlap (Docket No 146), they are presently two  
17 different District cases. However, plaintiff clearly seeks discovery in the Gray case to  
18 advance claims alleged in the Lauber case. At a minimum, it is the equivalent of two  
19 depositions of each defendant. Not only is this not cost effective, it is also in  
20 contravention of applicable discovery rules and prejudicial to defendants who have yet  
21 to appear in Lauber.  
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1 **B. Rule 37.1 Compliance.**

2 Counsel for defendant Midland has discussed the discovery matters with  
3 counsel for plaintiffs both by way of email communication and telephonic  
4 communication. As of the date of this pleading, plaintiffs have not agreed to continue  
5 the depositions and request this matter be decided by the Court.  
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7 **IV.**

8 **RELIEF REQUESTED**

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10 Due to the upcoming scheduled deposition dates of December 7, 8 and 9, 2010,  
11 the defendant Midland Funding, LLC respectfully requests the Court rule on this  
12 matter pursuant to Local Rule 37.1(e) or in the alternative, set a brief telephonic  
13 hearing to address these issues on December 1, 2, or 3, 2010 at the Courts  
14 convenience.  
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17 WHEREFORE, Midland Funding respectfully requests the 30(b)(6) deposition  
18 be stayed pending ruling on plaintiffs Motion to Consolidate.  
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20 DATED this 30<sup>th</sup> day of November, 2010.

21  
22 CRUMB & MUNDING, P.S.

23 */s/ John D. Munding*

24 \_\_\_\_\_  
25 JOHN D. MUNDING, WSBA #21734  
26 Attorneys for Defendant Midland Funding,  
LLC



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WASHINGTON  
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4 **CERTIFICATE OF SERVICE**

5 I, Ashley Woods, the undersigned, hereby certify that on November 30, 2010, I  
6 electronically filed the foregoing Corporate Disclosure Statement with the Court using  
7 the Court's CM/ECF system, which will send notification of such filing to the  
8 following persons:  
9

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21 Dated this 30th day of November, 2010.  
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23 */s/ Ashley M. Woods*  
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ASHLEY M. WOODS

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